



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,368	04/19/2001	Rabindranath Dutta	AUS920010016US1	9247

35525 7590 12/01/2006

IBM CORP (YA)
C/O YEE & ASSOCIATES PC
P.O. BOX 802333
DALLAS, TX 75380

EXAMINER

REFAI, RAMSEY

ART UNIT PAPER NUMBER

2152

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/838,368	Applicant(s) DUTTA ET AL.	
	Examiner Ramsey Refai	Art Unit 2152	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 11/13/06. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

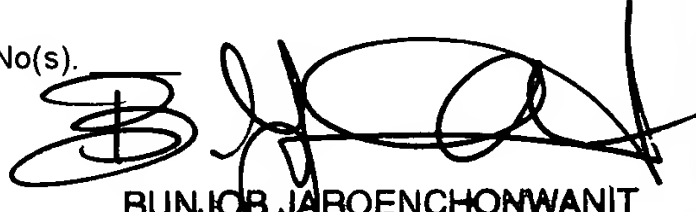
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 6, 7, 10, 12-16, 23, 25, 32 and 36-38.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).
13. ☐ Other: _____.


BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: In the remarks, the Application argues in substance

Muir fails to teach sending a service load that provides a uniform resource locator for an application, the application is an application that the wireless device may retrieve in order to transmit data to the server.

In response, the Examiner respectfully disagrees. Lazaridis et al teach the backing up of data from a wireless device to a host based on a detected triggering event at the client. Once the event is detected, a synchronize (back up) request is pushed to the client (column 2, line 66-column 3, lines 12, column 4, lines 25-56, column 9, lines 27-40; Lazaridis et al). Muir teach that a browser obtains a first message from a network server node. The user then clicks on a hyprelink to obtain a configuration file (taken here as the claimed "application") which corresponds to the application from a network server. The configuration file is used to establish a communication link to a server agent. (column 3, lines 1-46; Muir). The combination of Lazaridis et al and Muir would have been obvious to one of the ordinary skill in because doing so would allow for a server to provide the client an address which can be used to access an application located on a server to back up data from the client device to server. This would greatly benefit client devices with very limited resources by allowing users to backup data to a server without requiring the backup program to be stored on the user's client device.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Dutta et al.**

Serial No.: **09/838,368**

Filed: **April 19, 2001**

For: **Automatic Backup of Wireless
Mobile Device Data onto Gateway
Server While Device is Idle**

§
§
§
§
§
§

Group Art Unit: **2152**

Examiner: **Refai, Ramsey**

Attorney Docket No.: **AUS920010016US1**

35525

PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

NOTICE OF APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

11/27/06
OK to ENTER. AF
ML

Sir:

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the office action dated August 11, 2006 finally rejecting claims 1-4, 6-21 and 23-39.

No fees are believed to be required. In the event that any fees are required for the prosecution of this application, please charge any necessary fees to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is needed, the extension is requested and the fee for this extension should be charged to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,

/Wayne P. Bailey/

Wayne P. Bailey

Reg. No. 34,289

YEE & ASSOCIATES, P.C.

P.O. Box 802333

Dallas, Texas 75380

(972) 385-8777

ATTORNEY FOR APPLICANTS